

Disposal of Unneeded Federal Buildings: Legislative Proposals in the 112th Congress

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Summary

Federal executive branch agencies hold an extensive real property portfolio that includes approximately 399,000 buildings. These assets have been acquired over a period of decades to help agencies fulfill their diverse missions. Agencies hold buildings with a range of uses, including offices, health clinics, warehouses, and laboratories. As agencies' missions change over time, so, too, do their real property needs, thereby rendering some assets less useful or unneeded altogether. Healthcare provided by the Department of Veterans Affairs (VA), for example, has shifted in recent decades from predominately hospital-based inpatient care to a greater reliance on clinics and outpatient care, with a resulting change in space needs. Similarly, the Department of Defense (DOD) reduced its force structure by 36% after the Cold War ended, and has engaged in several rounds of base realignments and installation closures.

Real property disposition is the process by which federal agencies identify and then transfer, donate, or sell real property they no longer need. Disposition is an important asset management function because the costs of maintaining unneeded properties can be substantial, consuming financial resources that might be applied to pressing real property needs, such as repairing existing facilities, or towards other pressing policy issues, such as reducing the national debt.

In FY2010—the most recent data available—the government held 77,700 buildings it identified as either not utilized or underutilized and spent \$1.67 billion dollars operating and maintaining them. Agencies have said that their efforts to dispose of unneeded space are often hampered by legal and budgetary disincentives, and competing stakeholder interests. In addition, Congress may be limited in its capacity to conduct oversight of the disposal process because it currently lacks access to reliable, comprehensive, real property data. The government's inability to efficiently dispose of its unneeded property is a major reason that federal real property management has been identified by the Government Accountability Office (GAO) as a "high risk" area since 2003.

This report begins with an explanation of the real property disposal process, and then discusses some of the factors that have made disposition relatively inefficient and costly. It then examines four bills introduced in the 112th Congress that would address those problems: the Federal Real Property Asset Management Reform Act (S. 2178), the Excess Federal Building and Property Disposal Act (H.R. 665), and two bills titled the Civilian Property Realignment Act (H.R. 1734 and S. 2232) which are similar, but not identical. This report concludes with a discussion of policy options for enhancing both the disposal process and congressional oversight of it.

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Background

Real property disposal is the process by which federal agencies identify and then transfer, donate, or sell real property they no longer need. Agencies may also consolidate or co-locate their offices in order to reduce the amount of unneeded space they own or lease. Disposition is an important asset management function because the costs of maintaining unneeded properties can be substantial, consuming financial resources that might be applied to long-standing real property needs, such as repairing existing facilities, or other pressing policy issues, such as reducing the national debt.

In FY2010, the government held 77,700 buildings it identified as either not utilized or underutilized and spent \$1.67 billion dollars operating and maintaining them.¹ Federal agencies have indicated that their disposal efforts are often hampered by legal and budgetary disincentives, and competing stakeholder interests.² In addition, Congress may be limited in its capacity to conduct oversight of the disposal process because it currently lacks access to reliable, comprehensive real property data. The government's inability to efficiently dispose of and utilize its property is a major reason that federal real property management has been identified by the Government Accountability Office (GAO) as a "high-risk" area since 2003.

Obstacles to Timely and Efficient Disposition

As noted, the government maintains a large inventory of unneeded or underutilized properties. These properties not only incur costs to the government to operate and maintain, but could, in some instances, be utilized by nonfederal entities—state and local governments, nonprofits, private sector businesses—to accomplish a range of public purposes, such as providing services to the homeless, or facilitating economic development. GAO reports have consistently noted that efforts to dispose of unneeded and underutilized properties are hindered by statutory disposal requirements, the cost of preparing properties for disposal, conflicts with stakeholders, and a lack of accurate data. Each of these issues is discussed here.

Statutory Disposal Requirements

The steps in the real property disposal process are set by statute. Agencies must first offer to transfer properties they do not need (excess properties) to other federal agencies, who generally pay market value for excess properties they wish to acquire.³ Unneeded properties that are not acquired by federal agencies (surplus properties) must then be offered to state and local governments, and qualified nonprofits, for use in accomplishing public purposes specified in statute, such as use as public parks or for providing services to the homeless.⁴ Agencies may convey surplus properties to state and local governments, and qualified nonprofits, for public benefit at less than fair market value—even at no cost.⁵ Surplus properties not conveyed for

¹ Federal Real Property Council (FRPC), *FY2010 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets*, September 2011, p. 13. Underutilized buildings are those that have a certain percentage of space that is not being used, generally calculated as a ratio of occupancy to design capacity.

² U.S. Government Accountability Office, *Federal Real Property: The Government Faces Challenges to Disposing of Unneeded Buildings*, GAO-11-370T, February 10, 2011, pp. 4-8.

³ 40 U.S.C. §102.

⁴ *Ibid.*

⁵ *Ibid.*

public benefit are then available for sale at fair market value or are demolished if the property could not be sold due to the condition or location of the property.⁶

Agencies have consistently argued that these statutory requirements slow down the disposition process, compelling agencies to incur operating costs for months—sometimes years—while the properties are being screened.⁷ Real property officials at the Department of Veterans Affairs (VA) have said the McKinney-Vento Act—which mandates that all surplus property be screened for homeless use—can add as much as two years to the disposal process.⁸ Because public benefit conveyance requirements are set in law, agencies do not have the authority to skip screening, even for surplus properties that could not be conveyed anyway. The Department of Energy (DOE), for example, told auditors that they had properties that they felt could be disposed of only by demolition, due to their condition or location, but that still had to go through the screening process, thereby forcing DOE to pay maintenance costs that could have been avoided.⁹

Statutes pertaining to environmental remediation or historic preservation also add time to the process. It may take agencies years of study to assess the potential environmental consequences of a proposed disposal, and to develop and implement an abatement plan, as required by law.¹⁰ Similarly, the National Historic Preservation Act requires agencies to plan their disposal actions so as to minimize the harm they cause to historic properties, which may include additional procedures such as consulting with historic preservation groups at the state, local, and federal level.¹¹

Disposal Costs

Unneeded buildings are often among the older properties in an agency's portfolio. As a consequence, agencies sometimes find that they are required to complete expensive repairs and renovations before the properties are ready for disposal. Agencies may need to invest in repairs that will enable a building to meet health and safety standards, for example, or restore historic sites in accordance with federal standards. It has been estimated, for example, that VA would need to spend about \$3 billion to repair the buildings in its portfolio that it rated in "poor" or "critical" condition—56% of which were vacant or underutilized, and therefore might be candidates for disposal.¹² Agencies that wish to demolish vacant buildings face deconstruction and cleanup costs that, at times, exceed the cost of maintaining the property—at least in the short run—which may encourage real property managers to retain a property rather than dispose of it.¹³ Federal agencies frequently cite the cost of complying with environmental regulations as a major disincentive to

⁶ 40 U.S.C. §545.

⁷ There are benefits to these requirements as well, but they are not the focus of this memorandum.

⁸ U.S. Government Accountability Office, *Federal Real Property: Progress Made in Reducing Unneeded Property, but VA Needs Better Information to Make Further Reductions*, GAO-08-939, September 2008, p. 39.

⁹ U.S. Government Accountability Office, *Federal Real Property: Progress Made Toward Addressing Problems, but Underlying Obstacles Continue to Hamper Reform*, GAO-07-349, April 2007, p. 40.

¹⁰ U.S. Government Accountability Office, *High-Risk Series: Federal Real Property*, GAO-03-122, January 2003, p. 41.

¹¹ U.S. Government Accountability Office, *Federal Real Property: DHS Has Made Progress, but Additional Actions Are Needed to Address Real Property Management and Security Challenges*, GAO-07-658, June 2007, p. 42.

¹² U.S. Government Accountability Office, *Federal Real Property: Progress Made in Reducing Unneeded Property, but VA Needs Better Information to Make Further Reductions*, GAO-08-939, September 2008, p. 5.

¹³ U.S. Government Accountability Office, *Federal Real Property: Progress Made Toward Addressing Problems, but Underlying Obstacles Continue to Hamper Reform*, GAO-07-349, April 13, 2007, pp. 40-41.

disposal.¹⁴ Generally speaking, agencies are required to assess and pay for any environmental cleanup that may be needed before disposing of a property. Identifying and addressing environmental hazards, such as lead paint, asbestos, medical waste, and soil contamination, prior to disposition can result in “significant” up-front costs for agencies.¹⁵

Stakeholder Conflict

Some agencies have found their disposal efforts complicated by the involvement of stakeholders with competing agendas. The Department of the Interior has said that it can be stymied by the competing concerns of local and state governments, historic preservation offices, and political factors, when attempting to dispose of some of its unneeded real property.¹⁶ Similarly, VA has found that communities sometimes oppose disposals that would result in new development, and veterans groups have opposed disposing of building space if that space would be used for purposes unrelated to the needs of veterans.¹⁷ The Department of State has had difficulty in disposing of surplus real property overseas, due to disputes with host governments that restrict property sales.¹⁸ These conflicts can result in delay, or even cancellation of proposed disposals, which, in turn, prevent agencies from reducing their inventories of unneeded properties.¹⁹

Real Property Management and Oversight

In addition to the obstacles mentioned above, data about agency real property portfolios—which might be useful for both decision making at the agency level and congressional oversight—appear to be inaccurate, and government-wide data are accessible only to the agency that manages it, the General Services Administration (GSA). Moreover, GAO audits and congressional hearings have determined that agencies regularly enter into leases rather than new construction when acquiring space, even though the leased space is more expensive over time.

Availability and Quality of Real Property Data

The Federal Real Property Profile (FRPP) is the government’s most comprehensive source of information about real property under the control of executive branch agencies. GSA manages the FRPP and collects real property data from 24 of the largest landholding agencies each year. Other agencies are encouraged, but not required, to report data to GSA.²⁰ The data elements that

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid., p. 16.

¹⁷ U.S. Government Accountability Office, *Federal Real Property: Progress Made in Reducing Unneeded Property, but VA Needs Better Information to Make Further Reductions*, GAO-08-939, September 2008, p. 5.

¹⁸ U.S. Government Accountability Office, *High-Risk Series: Federal Real Property*, GAO-03-122, January 2003, p. 40.

¹⁹ There is no government-wide real property guidance for addressing stakeholder conflicts.

²⁰ Executive Order 13327, “Federal Real Property Asset Management,” 69 *Federal Register* 5897, February 4, 2004. According to the provisions of E.O. 13327, only the 24 agencies listed in 31 U.S.C. 901(b)(1) and (b)(2), which are subject to the Chief Financial Officers Act, are required to report real property data to GSA. Those agencies are the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, the Treasury, and Veterans Affairs; the Environmental Protection Agency; General Services Administration; National Aeronautics and Space Administration; National Science Foundation; Nuclear Regulatory Commission; Office of Personnel Management; Small Business Administration; Social Security Administration; and United States Agency for International Development.

participating agencies collect and report are determined by the Federal Real Property Council (FRPC), an interagency taskforce that is funded and chaired by the Office of Management and Budget (OMB). The other members of the council are agency senior real property officers (SRPOs) and GSA.

The FRPP contains data that could enhance congressional oversight of federal real property activities, such as the number of excess and surplus properties held by major landholding agencies, the annual costs of maintaining those properties, and agency disposition actions. GSA, however, does not permit direct access to the public and most federal employees, including Congress, on the grounds that the data are proprietary. GSA does respond to requests for real property data from congressional offices, but GSA staff query the database and provide the results to the requestor.

Some FRPP data are made public through an annual summary report posted on GSA's website, but the summary reports are of limited use for several reasons.²¹ Most of the data are highly aggregated (e.g., the number of assets disposed of, government-wide, through public benefit conveyance), and very limited information is provided on an agency-by-agency basis. It is not possible, therefore, for Congress to monitor the performance of individual agencies through the summary reports. Basic questions, such as how many excess and surplus properties each agency holds or has disposed of in a given fiscal year, cannot be answered. Nor is it possible to compare the performance of agencies, which limits the ability of Congress to study the policies and practices at the most successful agencies and hold poorly performing agencies accountable.

The quality of the FRPP data has been questioned. GAO audits have found, for example, that some real property data were incomplete or were not comparable across agencies, which limited the usefulness of those data for analysis.²² The most recent GAO report, from June 2012, declared that the FRPP had not been populated through sound data collection practices and key data elements—such as a building's utilization, condition, annual operating costs, mission dependency, and value—are not consistently and accurately captured in the database.²³ The GAO report concluded that FRPP users cannot be sure that the data are sufficiently reliable to support sound management and decision making about excess and underutilized property.²⁴

In addition, annual summary reports based on FRPP data may miscategorize important information on disposal methods. As discussed previously, agencies are statutorily required to dispose of properties through transfer, conveyance, sale, or demolition. Recently published FRPC summary reports, however, identify "other" as the largest or second largest category of property disposal, accounting for 46% of the total number of real property assets disposed by agencies in FY2007, nearly 73% of those disposed in FY2008, 41% in FY2009, and 33% in FY2010.²⁵ Typically, the "other" data category is reserved for a relatively small number of cases that do not

²¹ The annual real property summary reports may be found on GSA's Federal Real Property Report Library website, at http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=23962.

²² U.S. Government Accountability Office, *Federal Real Property: An Update on High-Risk Issues*, GAO-09-801, July 15, 2009, p. 10.

²³ U.S. Government Accountability Office, *Federal Real Property: National Strategy and Better Data Needed to Improve Management of Excess and Underutilized Property*, GAO-12-645, June 2012, p. 1.

²⁴ Ibid.

²⁵ Federal Real Property Council, *FY2007 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets*, May 2008, p. 33. Federal Real Property Council, *FY2008 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets*, August 2009, p. 24. Federal Real Property Council, *FY2010 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets*, September 2011, p. 13.

clearly fit into one of the major data categories, so it is unusual to see such a large number of “other” dispositions. In fact, the FRPP defines “other” disposals as those “that cannot be classified in any of the other disposition methods.” The annual reports, however, do not explain why so many disposals cannot be classified as transfer, conveyance, sale, or demolition.²⁶ One explanation may be that agencies are misreporting their disposal data; another may be that some disposals are a combination of methods. If so, then the data reported for all types of dispositions may be of limited use, because thousands of properties may have been miscategorized.

The annual summary reports also omit data that Congress might find valuable. The FRPP contains, for example, the number of excess and surplus properties held by each agency and the annual operating costs of those properties—issues about which Congress has expressed ongoing interest—but the summary report only provides the number and annual operating costs of disposed assets, thereby providing the “good news” of future costs avoided through disposition while omitting the “bad news” of the ongoing operating costs associated with excess and surplus properties the government maintained. In addition, agencies estimate a dollar amount for the repair needs of their buildings and structures as part of their FRPP reporting, but the estimate is then folded into a formula for calculating the condition of each building.²⁷ Given that repair needs are an obstacle to disposing of some properties, Congress may find it useful to have the repair estimates reported separately to help inform funding decisions.

Overreliance on Leasing

In a 2011 report, GAO wrote that it considers the government’s “overreliance on costly leased space” to be one of the primary reasons federal real property continues to be designated as a “high risk” issue.²⁸ The percentage of square feet leased by GSA—which leases property for itself and on behalf of many agencies—now exceeds the percentage of square feet it owns. According to GAO, leasing space is typically more expensive than owning space over the same time period. GAO cited, for example, a long-term operating lease that cost an estimated \$40.3 million more than if the agency had purchased the same building.²⁹ Similarly, in FY2010, the annual operating cost for a square foot of space in a building owned by the government was \$5.30, but for leased space it was \$15.00.³⁰

GAO wrote that while the decision to lease rather than purchase space may be driven by operational requirements—such as the United States Postal Service (USPS) leasing space in areas that it believes will optimize the efficiency of mail delivery—agencies often choose to lease rather than purchase space because of budget scoring rules, even if the decision to lease is not the most cost-effective option. Under the Budget Enforcement Act of 1990, an agency must have budget authority up-front for the government’s total legal commitment before acquiring space. Thus, if an agency were to construct or purchase a building, it would need up-front funding for

²⁶ Federal Real Property Council, *FY2010 Federal Real Property Report: An Overview of the U.S. Federal Government’s Real Property Assets*, September 2010, p. 13.

²⁷ U.S. General Services Administration, Office of Governmentwide Policy, *FY2008 Federal Real Property Report*, August 2009, p. 30.

²⁸ U.S. Government Accountability Office, *Federal Real Property: Overreliance on Costly Leasing Contributed to High-Risk Designation*, GAO-11-879T, August 4, 2011, p. 2.

²⁹ Ibid.

³⁰ Federal Real Property Council (FRPC), *FY2010 Federal Real Property Report: An Overview of the U.S. Federal Government’s Real Property Assets*, September 2011, p. 4.

the entire cost of the construction or acquisition, while leased space only requires the annual lease payment plus the cost of terminating the lease agreement.

In addition to the budget scoring issue, some agencies have been granted independent leasing authority, which means they do not have to work with GSA to acquire leased space. Some agencies with independent leasing authority, such as the USPS and VA, have established in-house real property expertise, while other agencies with independent authority have not. The Securities and Exchange Commission (SEC), for example, entered into a \$557 million, 10-year lease for 900,000 square feet, which the SEC's inspector general (IG) called "another in a long history of missteps and misguided leasing decisions made by the SEC since it was granted independent leasing authority."³¹ The IG found that "inexperienced senior management" at the SEC made poor decisions that led to acquiring three times the space needed—the original estimate provided to Congress was for 300,000 square feet—and bypassing other locations that were closer and less expensive.³²

H.R. 1734: Civilian Property Realignment Act

H.R. 1734, which passed the House on February 7, 2012, would draw on the military base realignment and closure (BRAC) model of real property disposal by establishing an independent commission to assess agency portfolios and to recommend actions for reducing the government's inventory of unneeded and underutilized buildings and structures, as well as disposing of some properties that are not listed as excess or surplus, but which could yield savings through their disposal.³³ Another proposal in the 112th Congress, S. 2232, is also loosely based on the BRAC model, but the Senate and House bills are not identical and some of their differences are identified in this report.

Scope

H.R. 1734 has a broad scope, applying to space owned and leased by all executive branch agencies and government corporations—not just properties that are excess or surplus. The bill would exclude some properties, such as those held by the Department of Defense, the Coast Guard, the USPS, certain Indian and Native Alaskan properties, and properties located outside the United States. The legislation would encompass most major real property asset management functions, collectively referred to as "realigning" actions, including the consolidation, reconfiguration, co-location, exchange, sale, redevelopment, and transfer of unneeded or underutilized properties.

Development of Recommendations

The first step in the process proposed by H.R. 1734 would be for federal landholding agencies to develop their own recommendations for realigning their real property portfolios and for reducing operating and maintenance costs. Agencies would submit these recommendations to GSA and OMB not later than 120 days after the start of each fiscal year, along with specific data on each of

³¹ Securities and Exchange Commission, Office of Inspector General, *Report of Investigation: Improper Actions Relating to the Leasing of Office Space*, May 16, 2011, p. 2.

³² Ibid.

³³ For more information about the BRAC process, see CRS Report R40476, *Base Realignment and Closure (BRAC): Transfer and Disposal of Military Property*, by R. Chuck Mason.

the properties they own, lease, or otherwise control, including the age and condition of the property, its operating costs, and size.

The GSA Administrator and the OMB Director would have two primary responsibilities under H.R. 1734. First, they would work together to develop criteria that would be used to determine which properties should be realigned and what type of realignment should be recommended (e.g., sale or consolidation) for each property. The bill specifies that nine “principles” must be taken into account when establishing the criteria; some of the supporting data may already be collected by agencies as they develop their asset management plans or meet existing reporting requirements, such as those for the FRPP:

- The extent to which a property aligns with the current mission of the agency
- The extent to which there are opportunities to consolidate similar operations across or within agencies
- The potential costs and savings over time
- The economic impact on existing communities in the vicinity of the property
- The extent to which the utilization rate is being maximized and is consistent with nongovernment standards
- The extent to which leasing long-term space would be reduced
- The extent to which the property could be redeveloped
- The extent to which the operating and maintenance costs would be reduced through the consolidation, co-location, and reconfiguring of space
- The extent to which energy consumption specifically would be reduced

The OMB Director, in consultation with the GSA Administrator, would then review the recommendations submitted by the agencies and revise the submissions, as needed, after conducting their own independent analysis. They would then submit revised recommendations, along with the criteria, to a newly established Civilian Property Realignment Commission. The Commission would be composed of nine members, each serving a six-year term. The chair would be appointed by the President, with the advice and consent of the Senate. The President would appoint the other eight members of the Commission, but would also be required to consult with the Speaker of the House regarding the appointment of two members, the minority leader of the House regarding one member, the Senate majority leader regarding two members, and the minority leader of the Senate regarding one member. H.R. 1734 would also require that the Commission include members with expertise in commercial real estate and redevelopment, government management or operations, community development, or historic preservation. The Commission would terminate after six years.

The Commission would assess agency real property inventories and submit the “final” recommendations to the President regarding which properties should be realigned and by what method, with the over-arching objectives of decreasing the size of the federal real property portfolio, reducing operating costs, and ensuring that properties are put to their “best use” in the interest of the taxpayer. The Commission would be required to hold public hearings and develop an accounting system to help evaluate the costs and returns of various recommendations. The Commission would then submit a report to the President that would include its findings, conclusions, and recommendations. The bill would also require the Commission to submit a list of at least five federal properties not listed as excess or surplus, which have an estimated fair market value of at least \$500 million. CBO estimated in its evaluation of the committee-passed version of H.R. 1734—which included a similar provision—that the sale of high-value assets could yield \$164 million in savings. The text of the House-passed version of H.R. 1734 does not

specify that all of the high-value assets must be sold, although the Commission may choose to recommend selling each of them, subject to the approval of the President and Congress, as described below.

While the Commission “shall seek to develop consensus” in its recommendations, the report may include recommendations supported by only a majority of Commission members. The Commission would also be required to establish a website and post its findings, conclusions, and recommendations on it. H.R. 1734 would require GAO to publish a report on the recommendations, including how properties were selected for realignment.

Review by the President

The President would be required to review the Commission’s recommendations and submit, within 30 days of receiving them, a report to Congress that identifies which recommendations are approved, and which, if any, are not. If the President approves of all of the Commission’s recommendations, then he must submit a copy of the recommendations to Congress along with a certification of his approval. If the President disapproves of some or all of the Commission’s recommendations, he would be required to submit a report to Congress and to the Commission identifying the reasons for disapproval, and the Commission would have 30 days to submit a revised list of recommendations to the President. If the President approves of all of the revised recommendations, he must submit a copy of the revised recommendations along with a certification of his approval to Congress. If the President does not submit a report within 30 days of the receipt of the Commission’s original or revised recommendations, then the process terminates for the year and agencies are not required to dispose of any properties under H.R. 1734. In effect, the President would be able only to approve or reject a complete list of recommendations. He would not be able to amend the Commission’s recommendations himself before approving them.

Congressional Consideration of the Recommendations

After receiving the recommendations approved by the President, Congress would have 45 days to review them and debate their merits. Congress would be required to vote on a joint resolution of approval by the end of that period. As with the President, Congress would have the authority only to act on the entire list, not to approve or disapprove of individual recommendations. If no joint resolution of approval is passed within the 45 day time limit, or if the resolution is passed and the President vetoes it, then agencies would not be required to implement the recommendations.

Implementation

If a joint resolution of approval were enacted, agencies would be required to begin implementation not later than two years from the date the President transmitted the recommendations to Congress, and to complete implementation no later than six years from the same date, unless notice is provided to the President and to Congress that “extenuating circumstances” have caused the delay. The GSA Administrator would be given authority to “take such necessary and proper actions, including the sale, conveyance, or exchange of civilian real property, as required to implement the Commission recommendations,” as enacted. Other federal agencies must either use their existing authorities to implement the recommendations or work with GSA to do so. The Administrator would also have the authority to convey property for less than fair market value, or for no consideration at all. This would appear to permit agencies, working either through GSA or through their own authorities, to bypass steps in the existing disposal process. A property recommended for public sale, for example, may not have to go

through the public benefit screening process. H.R. 1734 would require the Secretary of the Department of Housing and Urban Development to evaluate “to the extent practicable” certain properties for homeless use as required under the McKinney-Vento Act. The provision would apply to properties identified for disposal in an enacted joint resolution of approval that were not more than 25,000 square feet or were valued at less than \$5 million.

H.R. 1734 would also expand the reporting requirements for all real property actions that exceed the prospectus threshold—the dollar amount established in 40 U.S.C. 3307 above which agencies must obtain approval from the House Transportation and Infrastructure Committee and the Senate Environment and Public Works Committee. The bill would require each prospectus to include a statement of whether the proposal was consistent with H.R. 1734 and how life-cycle cost analysis was used to determine long-term costs, the life-cycle cost of a building, and “any increased design, construction, or acquisition costs identified” that are offset by lower long-term costs.

Funding

H.R. 1734 would establish two accounts: a salaries and expense account to fund the Commission’s administrative and personnel costs, and an asset proceeds and space management fund (APSMF), which would be used to implement recommended actions. Both accounts would receive funds from appropriations—the bill authorizes a one-time appropriation of \$20 million for the salaries and expenses account and a \$62 million appropriation for the APSMF—but the APSMF would also receive the proceeds generated by the sale of properties pursuant to the Commission’s recommendations. The sales proceeds deposited in the APSMF account could only be used to cover the costs associated with implementing the Commission’s recommendations.

Leasing Authority

H.R. 1734 would require most executive agencies seeking to acquire leased space to do so only by working through GSA. This restriction would not apply to VA properties or properties excluded for reasons of national security by the President. This requirement may facilitate oversight by consolidating leasing decisions with a single agency, although it is not clear whether this would restrict GSA’s ability to delegate leasing authority to other agencies. If agencies were no longer able to use independent or delegated leasing authority, it could delay the acquisition of space needed to carry out their missions.

S. 2232: The Civilian Property Realignment Act

As noted earlier, the language in S. 2232 is also based on the BRAC model of real property disposal. While sections of S. 2232 are similar or even identical to sections of H.R. 1734, there are differences, including the size of the independent Commission and the Congress’s role in approving or disapproving the recommendations it receives from the President.

Scope

Federal buildings, leased space, and grounds with improvements or occupants under the control of any federal agency—with a few exceptions—would be subject to S. 2232. Properties excluded from S. 2232 include military installations subject to BRAC, properties excluded for reasons of national security, USPS properties, and certain Indian and native Eskimo properties.

Development of Recommendations

As with H.R. 1734, the first step in the process under S. 2232 would be for federal landholding agencies to develop their own recommendations for realigning their real property portfolios and for reducing operating and maintenance costs. Agencies would submit these recommendations to GSA and OMB not later than 120 days after the start of each fiscal year, along with specific data on each of the properties they own, lease, or otherwise control, such as age, condition, size, funding history, and operating costs. The ultimate objective of these recommendations would be to reduce the federal inventory, reduce spending on operating costs, and to obtain the greatest value for the taxpayer. The legislation specifically mentions pursuing enhanced use leases—where the government leases unused space in federally owned buildings—as a way to realize the “highest and best use” of buildings.

Also like H.R. 1734, the GSA Administrator and the OMB Director would be required to work together to develop criteria that would be used to determine which properties should be realigned and what type of realignment should be recommended (e.g., sale or consolidation). The bill specifies the same nine “principles” from H.R. 1734 which must be taken into account when establishing the criteria. S. 2232 would also require the OMB Director, in consultation with the GSA Administrator, to review the recommendations submitted by the agencies and revise them, as needed, after conducting their own independent analysis, and submit the revised recommendations, along with the criteria, to a new Civilian Property Realignment Commission.

The seven-member Commission under S. 2232 would be smaller than the nine-member Commission proposed under H.R. 1734. The Commission in the Senate bill would include a chairperson appointed by the President, with the advice and consent of the Senate. In addition, the President would appoint two other members of the Commission, and one Commission member would be appointed each by the Senate Majority and Minority Leaders, the Speaker of the House, and the House Minority Leader. Each member would serve a six-year term. S. 2232, like H.R. 1734, would require that the Commission include members with expertise in commercial real estate and redevelopment, government management or operations, community development, or historic preservation.

The Commission under S. 2232 would independently analyze agency real property portfolios and provide its own recommendations to the President. The Commission would be given access to all available agency real property portfolio data, including data in the FRPP. Moreover, the Commission may receive proposals and data from state and local governments and the private sector, with all such information made available to the public. The Senate bill, like H.R. 1734, would also require the Commission to hold public hearings on its proposed recommendations and to establish a website through which it would make “relevant information” about the Commission available to the public.

S. 2232 and H.R. 1734 are similar in that under both bills, the Commission would be required to identify at least five federal properties not listed as excess or surplus but which have an estimated sale price, as determined by the Commission, of at least \$500 million each. Under S. 2232, these “high-value assets” would be submitted to the President as recommendations, which, if approved, would require the sale of those properties not later than 120 days after approval, at fair market value. The Commission would also be required to identify, on an annual basis, the number of assets outside the United States managed by the Department of State—a provision not found in H.R. 1734—that may be sold for proceeds or otherwise disposed. These properties would be included in the Commission’s recommendations.

Review by the President

The President's authorities under S. 2232 are essentially the same as those that would be provided in H.R. 1734. Under the Senate bill, the President would be required to review the Commission's recommendations and submit, within 30 days of receiving them, a report to Congress that identifies which recommendations are approved, and which, if any, are not. If the President approves of all of the Commission's recommendations, then he must submit a copy of the recommendations to Congress along with a certification of his approval. If the President disapproves of some or all of the Commission's recommendations, he would be required to submit a report to Congress and to the Commission identifying the reasons for disapproval, and the Commission would have 30 days to submit a revised list of recommendations to the President. If the President approves of all of the revised recommendations, he must submit a copy of the revised recommendations along with a certification of his approval to Congress. If the President does not submit a report within 30 days of the receipt of the Commission's original or revised recommendations, then the disposal process terminates for the year. As noted in the discussion of H.R. 1734, the President would be able only to approve or reject a complete list of recommended realignment actions under S. 2232—he would not be able to amend individual recommendations.

Congressional Consideration of the Recommendations

Under S. 2232, Congress would be required to pass a joint resolution of disapproval to within 45 days of the date on which the President submits the approved list of recommendations. If Congress does not pass a joint resolution within that time frame, then agencies are required to implement the recommendations, as if they had the force of law. To assist Congress in evaluating the recommendations, S. 2232 would permit certain committees and legislative branch agencies access to the FRPP: the Senate Committees on Environment and Public Works and Homeland Security and Governmental Affairs, the House Committees on Transportation and Infrastructure and Oversight and Government Reform, and the Committees on Appropriations in both the House and the Senate. Access to FRPP data would also be provided to the Congressional Research Service, the Government Accountability Office and the Congressional Budget Office.

Implementation

Agencies would be required to begin implementing recommendations within one year from when the President submits them to Congress, and complete them not later than three years from the date of the President's submission. If implementation of a recommendation is not complete in three years, then the agency responsible for implementation must notify the President and Congress of the delay and estimate the time to completion.

Properties that are recommended for disposal or other realignment actions, such as consolidation, would be exempted from provisions of several real property laws, including those requiring public benefit conveyance screening, specifically the homeless assistance screening requirements currently established by the McKinney-Vento Act. S. 2232 would, however, establish a streamlined disposal process for properties that were recommended for public benefit conveyance. Under the streamlined process, the Secretary of HUD would have 30 days from the date the recommendations are submitted to Congress to determine which, if any, of the properties recommended for public benefit conveyance are suitable for homeless use. Parties interested in obtaining federal property for homeless use would have another 30 days to submit a proposal. Parties interested in properties recommended by the Commission for public benefit use other than homeless assistance, must submit proposals within 30 days from which the Commission's recommendations are submitted to the President.

The bill would also change the reporting requirements for all real property actions that exceed the prospectus threshold—the dollar amount established in 40 U.S.C. 3307 above which agencies must obtain approval from the House Transportation and Infrastructure Committee and the Senate Environment and Public Works Committee. S. 2232 would require each prospectus to include a statement of how it relates to CPRA and how life-cycle cost analysis was used to determine long-term costs. The life-cycle cost of a building, according to the bill, includes costs for capital investment, energy consumption, and building operations, maintenance and repairs. Smaller buildings, such as those with estimated construction costs of under \$1 million or leases less than 25,000 square feet, would be exempt from the life-cycle cost requirements. In addition, the bill would require the prospectus to include, for all proposed leases, the net present value of the total estimated obligation of the federal government over the life of the contract and of the cost of constructing new space.

Leasing Authority

S. 2232 would require that all agencies, other than the USPS and VA, would be required to work through GSA to obtain a lease. Properties excluded by the President for reasons of national security would also be exempt from this requirement.

Funding

S. 2232 would establish the same two accounts as H.R. 1734—one for salaries and expenses and another for real property activities, called the Asset Proceeds and Space Management Fund (APSMF). Both accounts would receive funds from appropriations—also the same structure as in H.R. 1734—and the bill authorizes a one-time appropriation of \$20 million for the salaries and expenses account and a \$62 million appropriation for the APSMF—but the APSMF would also receive the proceeds generated by the sale of properties pursuant to the Commission’s recommendations or appropriated funds from agencies for the costs of real property management. The sales proceeds deposited in the APSMF account could only be used to cover the costs associated with implementing the Commission’s recommendations.

S. 2178: Federal Real Property Asset Management Reform Act

S. 2178 was introduced on March 8, 2012, and reported with an amendment in the nature of a substitute by the Homeland Security and Governmental Affairs Committee on June 29. The bill takes a broad approach to real property management, one that builds on existing resources and expertise, requires new performance measures and reporting, emphasizes finding opportunities for agency consolidation, co-location, and reconfiguration, and requires a thorough examination of the federal leasing process.

Scope

S. 2178 applies to federal buildings and structures under the control of any agency of the federal government, with the exception of Department of Defense (DOD) properties subject to Base Realignment and Closure (BRAC) legislation, properties excluded for reasons of national security, certain Indian and native Eskimo lands, and properties owned by the United States Postal Service (USPS). S. 2178 refers throughout to “underutilized” properties, which it defines as properties that are excess, surplus, underperforming (a term the bill does not define), or

“otherwise not meeting the needs of the federal government,” as determined by the Office of Management and Budget (OMB) Director.

Duties of Landholding Agencies

S. 2178 would require landholding agencies to develop a system of managing their real property holdings that would include

- maintaining adequate inventory controls and accountability systems;
- defining future workforce projections and their real property needs;
- identifying underutilized properties through ongoing surveys;
- reporting underutilized property to GSA promptly;
- establishing goals for reducing underutilized property;
- reassigning underutilized property to another activity within the agency;
- transferring underutilized property to other federal agencies;
- obtaining underutilized properties from other federal agencies before acquiring nonfederal property when new space is needed; and
- adopting workplace practices, management techniques, and space configurations that decrease the need for space.

Some of these duties are already required by regulation, but, by codifying them, agencies would have clear standards, set in statute, against which their real property management practices could be evaluated. In addition, the language makes it clear that a complete asset management plan must include identifying opportunities for reconfiguration that could result in a more efficient use of space.

Duties of the Federal Real Property Council

S. 2178 would set in statute an interagency real property working group, the Federal Real Property Council (FRPC), that was initially established through Executive Order 13327 under President George W. Bush. S. 2178 would not alter the structure of the working group, which would consist of the senior real property officer (SRPO) of each major landholding agency, OMB’s Deputy Director for Management, OMB’s Controller, and the GSA Administrator. Under S. 2178, as with E.O. 13327, OMB would chair the FRPC and provide administrative support and funding as necessary.

While the structure of the FRPC would remain unchanged, S. 2178 would expand its duties. Among those new responsibilities, the FRPC would be required to publish an annual asset management plan that includes performance measures which would enable Congress both to track government-wide progress in achieving real property goals and to compare the performance of landholding agencies against industry and other public sector agencies.

The FRPC would also be required to submit an annual report on the federal real property portfolio to the Senate Committees on Environment and Public Works and Homeland Security and Governmental Affairs, and the House Committees on Transportation and Infrastructure and Oversight and Government Reform. The report would include an analysis of the entire federal real property inventory, including, for each property, data on the age, condition, size, location, operating costs, history of capital expenditures, number of full time employees, and relevance of each property to the mission of the agency that controls it. The report would also be required to include data on leasing that are not reported regularly to Congress or made available to the public.

For example, the report would be required to include a list of agency field offices that might be co-located with another federal real property asset; an evaluation of the leasing process that identified and documented inefficiencies in that process; and a strategy for reducing the amount of leased space used for long-term needs when doing so would be less costly. Among the data required would be a description of the quantity and type of space leased by the government as a whole and a list of existing leases where the leased space is not fully used or occupied.

S. 2178 would also require the report to include an analysis of all underutilized property broken out by agency and a recommended disposal strategy for those properties that might be sold, transferred, conveyed, or demolished. The report would also be required to include an asset disposal plan that includes annual goals for reducing underutilized real property, the number of real property disposals completed and the method of disposal used, and specific milestones, measurable savings, and evaluation criteria for disposal of real property. The FRPC would be required to review all leases and work with agencies to renegotiate leases having at least two years remaining to a lower rate in an effort to achieve savings. The OMB Director would be required to prepare annual scorecards for each landholding agency to measure the success in achieving savings through all of its realignment activities.

Co-location Among United States Postal Service Properties³⁴

S. 2178 would require the FRPC to annually “identify and compile a list of agency field offices that are suitable for co-location with another federal civilian real property asset.” The list would be submitted to the Director of OMB and the Postmaster General, and a 90-day process would begin. The first step in this process would require OMB and USPS to identify the field offices within “a reasonable distance” of other federal facilities. The second step would require USPS to send to the Director of OMB a report reviewing the initial list.³⁵ After these steps are completed, agencies may lease space in USPS facilities for durations of not less than five years at a cost that is within 5 percent of the prevailing market lease rate for a similarly situated space identified under this subsection.

Existing USPS Real Property Authority

Congress has given USPS independent authority to acquire and dispose of its real estate as it deems proper.³⁶ Allowing USPS to make decisions over its real estate and property holdings has been viewed as integral to the concept of the USPS as encapsulated in the Postal Reorganization Act (PRA).³⁷ This 1970 statute replaced the Post Office Department with the U.S. Postal Service, and required it to be financially self-supporting. With the PRA, Congress relinquished a great deal of control over USPS’s operations as that control had proven problematic.³⁸

³⁴ This section authored by Kevin R. Kosar.

³⁵ S. 2178, Section 623(e)(3)(c) does not clarify what this “review” entails. The provision may be intended to have USPS produce a report that clarifies which of the facilities on the Council’s list are within a “reasonable distance” and meet any other requirements for the co-location of federal offices within them.

³⁶ Thus, for example, Congress exempted USPS from the federal property disposition statutes (40 U.S.C. §101).

³⁷ P.L. 91-375; 84 Stat. 725 (39 U.S.C. §101 et seq.)

³⁸ Congressional directives often inhibited the Post Office Department from controlling its operating costs and increasing its prices.

The PRA assigned USPS the “general duty” to “maintain an efficient system of collection, sorting, and delivery of the mail nationwide.”³⁹ In order to carry out this obligation, Congress provided USPS with a number of powers to generate revenue and control its operational costs, including authority to “determine the need for post offices, postal and training facilities and equipment, and ... provide such offices, facilities, and equipment as it determines are needed.”⁴⁰ This authority has helped USPS respond to shifts in population by expanding its presence in areas where the number of people and businesses was growing, and scaling back USPS’s operational footprint in places where population was decreasing. This authority over its property and facilities also permits USPS to alter its logistical (mail-moving) network to accommodate mail volume changes and technological developments in mail processing.⁴¹

Co-location Provisions of S. 2178

The definition of “underutilized property” in Section 2 of S. 2178 would appear to do little to alter the USPS’s existing authority over its real estate and properties, as it specifically excludes properties under control and custody of the Postal Service. However, the scope of the co-location provisions are not clear, because they define the term “postal property” as “real property owned by the United States Postal Service.” This definition would appear to encompass the 8,644 properties that USPS owns, including post offices, mail sorting factories, and area field offices.⁴² An additional ambiguity is that the co-location provisions define “agency field office” as “the field office of a landholding agency.” This would appear to apply to USPS as the Postal Service is a “landholding agency,” though it is unclear if that is what is intended. (This is the sole portion of the bill to define “agency field office,” a term used throughout the legislation.) The implications of this latter ambiguity are discussed below.

If S. 2178 is intended to include all postal properties within its scope, then the legislation would mark a significant shift from congressional postal policy since 1970. S. 2178 would reduce some of USPS’s property authority by directing USPS to work with OMB to co-locate other federal agencies into any excess space in the 8,644 USPS-owned facilities. The proceeds resulting from any lease would be required to be deposited in the Postal Service Fund.

Leasing

S. 2178 would require agencies with independent leasing authority to consult with GSA for leases that exceed the threshold set by GSA annually under the authority of 40 U.S.C. 3307. Agencies would also be required to acquire space at rates comparable to other properties in the area, and the GSA Administrator would be required to submit a report within 180 days of enactment that “describes the use of independent leasing authority” by agencies.

³⁹ 39 U.S.C. §403(b).

⁴⁰ 39 U.S.C. §404(a)(13).

⁴¹ Over the past century, the proportion of mail sorted by postal workers has greatly declined with the advent of machinery that can read the addresses on letters and parcels and sort them according to their destination.

⁴² In the postal context, the term “field office” may refer to the approximately 80 facilities where USPS officials “supervise postmasters and other managers who oversee and support local implementation of retail alternatives, in addition to their duties supporting the mail delivery network.” Government Accountability Office, *U.S. Postal Service: Action Needed to Maximize Cost-Saving Potential of Alternatives to Post Offices*, GAO-12-100, November 2011, p. 11. Both the Government Accountability Office and USPS’s inspector general have reported that USPS has more field offices than it requires, and that USPS would financially benefit from consolidating them. Government Accountability Office, *U.S. Postal Service: Strategies and Options to Facilitate Progress toward Financial Viability*, GAO-10-455, April 12, 2010; and U.S. Postal Service Office of Inspector General, *Postal Service Area and District Office Field Structure*, Report Number FF-AR-10-224(R), September 20, 2010.

Real Property Database

S. 2178 would require the GSA Administrator to establish and maintain a “single, comprehensive, and descriptive” database of all federal real property. The Administrator would have broad discretion in determining which information is included on the website, with the bill broadly requiring the Administrator to collect information that “will best describe the nature, use and extent” of the government’s real property portfolio. In addition, the database must be accessible to the public at no cost.

Expedited Disposal Program

Section 626 of S. 2178 would streamline the real property disposal process. It would require agencies to dispose of properties the OMB Director determines are underutilized. The disposal may occur through transfer, sale, conveyance, or demolition, and GSA may obligate funds to pay for the costs of identifying and preparing properties to be reported as excess—the first step in the disposal process. GSA would be repaid through the proceeds of any sale of underutilized properties. Properties may not be sold unless they would generate revenue, so properties that would cost more to prepare for sale than their estimated fair market value would not go to market at all.

All properties selected for the disposal program would be exempt from a range of provisions in existing laws, including statutory provisions that would require agencies to offer the properties for public benefit conveyance. Underutilized properties may be sold, transferred, or demolished, for example, without first being offered to aid the homeless or for other public purposes, as current law requires. Proceeds from the disposal of real property would be distributed as follows: 80% would be returned to the U.S. Treasury for debt reduction; the lesser of 18% or the share of proceeds otherwise authorized to be retained under law would be retained by the landholding agencies; not more than 2% would be used to fund homeless assistance grants (as described in Section 627 of the bill). Any remaining proceeds would be returned to the Treasury for deficit reduction. Agencies would have one year to use the proceeds they received, but only after use of those funds had been authorized in annual appropriations acts. The funds could only be used for real property asset management and disposal. If an underutilized property was not sold within two years of being listed for sale, then it may be conveyed to state and local governments or qualified nonprofits, with the exception of underutilized properties not used for housing that have an area greater than 25,000 square feet or a fair market value in excess of \$2 million, which would presumably remain available for sale or transfer.

Within a year of enactment and annually thereafter for a period of five years, the FRPC would be required to submit to the OMB Director a report concerning which agencies had not met their disposal goals, including a list of properties awaiting disposal. In addition, the Director would be required to issue an annual scorecard that measures the success of each agency in achieving savings, and determine whether it is possible for the government to save at least \$15 billion over a 10-year period.

Homeless Assistance Grants

S. 2178 would permit the Secretary of the Department of Housing and Urban Development (HUD) to use funds made available under Section 626 to provide grants to eligible private nonprofit organizations through the continuum of care program established under title IV of the McKinney-Vento Homeless Assistance Act. Eligible nonprofits must use any grant funds they receive to acquire or rehabilitate property in order to provide housing or shelter for the homeless.

Grant recipients must also agree to use the property only for homeless services for at least 15 years.

Consideration of Life-Cycle Costs

Section 202 would require the FRPC to take the life-cycle cost of an asset into account when determining whether to lease or construct new space. The requirement applies only to properties with estimated construction costs in excess of \$1 million, leased space in excess of 25,000 square feet, and assets where federal funding comprises more than 50% of the estimated total construction or lease costs. The life-cycle costs are defined in the legislation as including the sum of the estimated costs of investment, capital, installation, energy, operating, maintenance, and repair over the lifetime of the asset. S. 2178 defines “lifetime” as 50 years or the period of time in which the asset is projected to be used.

H.R. 665: Excess Federal Building and Property Disposal Act

H.R. 665, which passed the House on March 20, 2012, also takes a broad approach to real property disposal reform. It includes provisions that would expedite the disposal of certain high-value properties, require GSA to establish a publicly accessible real property database, reduce the scope of the McKinney-Vento Act, and require landholding agencies to implement policies and practices that would reduce the number of unneeded properties in their portfolios.

Expedited Disposal Program

The bill would establish a real property disposal program under which the GSA Administrator and the OMB Director, based on recommendations from landholding agencies, would identify the 15 federal properties that are excess or surplus and have the highest fair market value and the greatest potential to sell. Those properties would then bypass statutory transfer and conveyance requirements and be offered for sale immediately through public auction. Upon the sale of a property, the Administrator and Director would select another high-value property to take its place, thus maintaining a pool of 15 properties for sale under the program at all times. Properties subject to BRAC legislation, USPS properties, certain Indian and Native Eskimo properties, and properties the Administrator determined are suitable for use as a public park or recreation would be excluded from the program.

The expedited disposal program under H.R. 665 would not permit the sale of properties in the program for less than fair market value or if the property would not generate revenue in excess of the costs of disposal. In addition, properties selected for the H.R. 665 expedited program would be exempt from a range of provisions in existing laws, including statutory provisions that would require agencies to screen the properties for homeless use and public benefit conveyance.

Under H.R. 665, proceeds generated by the disposal of properties under the program would be deposited into the Treasury’s General Fund, with 2% of that amount authorized for homeless assistance grants as authorized in Section 625 of the bill. H.R. 665 would permit HUD to use the proceeds from the disposal of properties for grants to eligible private nonprofit organizations that aid the homeless.

Duties of the General Services Administration and Executive Agencies

H.R. 665 would require GSA to issue guidance on the development and implementation of agency real property plans, including recommendations for identifying excess properties, evaluating the costs and benefits associated with disposing of real property, and prioritizing disposal decisions based on agency missions and anticipated future holdings.

Executive agencies would be required to maintain adequate inventory controls and accountability systems, identify underutilized properties through ongoing surveys, report underutilized property to GSA, and transfer or dispose of excess property as promptly as possible. H.R. 665 would also require agencies to develop and implement a real property plan, identify and categorize all real property owned, leased or otherwise managed by the agency, and establish goals for reducing excess property in the agency's inventory. Finally, H.R. 665 would require agencies, "to the extent possible," to reassign underutilized property to another activity within the agency, transfer underutilized property to other federal agencies, and obtain underutilized properties from other federal agencies first before acquiring nonfederal property.

The bill would require GSA to issue a report within three years of enactment that would detail the efforts of each agency to reduce its excess and surplus properties, and for each property disposed of, the date, method, and cost of the disposal, the proceeds obtained from disposition, and the amount of time required to complete the disposition.

Agency Retention of Proceeds

The cost of bringing a property to market would be paid out of proceeds generated from the sale or transfer of real properties that were not included in the expedited disposal program. The remaining amount—net proceeds—would be deposited into the real property account of the agency that had custody of the property at the time it was declared excess. H.R. 665 would require net proceeds to be authorized for expenditure in annual appropriations acts, and those funds, if appropriated back to the agency, may only be used for real property activities. Any net proceeds not expended would be used for deficit reduction.

Federal Real Property Database

H.R. 665 would require GSA to establish a database of all federal real property other than properties excluded for purposes of national security. The database would have to include

- the location and size of each property;
- the relevance of each property to the agency's mission;
- the level of utilization of each property, including whether it was excess, surplus, underutilized, or unutilized, and the number of days each property was designated as such;
- the annual operating costs of each property; and
- the replacement value of each property.

Under S. 2178, the database must also to be accessible to the public at no cost through the GSA website; use a machine-readable format; and permit users to search, sort, and download data.

Sustainable Disposal of Property

H.R. 665 would require the head of each of each agency to divert at least 50% of construction and demolition materials and debris by the end of year 2015. While the legislation does not define “divert,” this term typically refers to recycling or reusing materials that otherwise would be disposed of at a landfill.⁴³

Streamlining the McKinney-Vento Homeless Assistance Act

Under H.R. 665 agencies would not be required to report properties for potential use for homeless assistance if those properties were located in an area for which the general public is denied access in the interest of national security, which the McKinney-Vento act currently requires. In addition, H.R. 665 would not eliminate the requirement that HUD publish a list of all surplus properties approved to assist the homeless in the *Federal Register* as current law requires. Instead, the bill would require this information to be published on a HUD or GSA website.

Comparison and Analysis of Key Provisions

Table 1, below, compares key provisions from each of the four proposals examined in this report—H.R. 1734, S. 2232, S. 2178, and H.R. 665. An analytical discussion of the same provisions follows **Table 1**.

Table 1. Comparison of Key Provisions of Select Real Property Proposals in the 112th Congress

	H.R. 1734	S. 2232	S. 2178	H.R. 665
Final Disposal Recommendations Proposed by	Civilian Property Realignment Commission	Civilian Property Realignment Commission	OMB Director	OMB Director in consultation with GSA
Congressional Action Required	Joint Resolution of Approval to permit implementation	Joint Resolution of Disapproval to prevent implementation	None	None
Expedited Disposal Provisions	Apply to all recommended disposals	Apply to all recommended disposals	Apply to all “underutilized” properties	Apply to 15 “high-value” properties
Real Property Database and Reporting Requirements	Commission would establish public website and have access to FRPP data	Commission would establish public website; Congress would have access to FRPP data	GSA would establish public website; FRPC would submit in-depth report to Congress	GSA would establish public website and submit in-depth report to Congress

⁴³ As part of its Strategic Sustainability Performance Plan (SSPP), for example, GSA has set a goal of diverting “50% of its nonhazardous solid waste and construction and demolition debris from landfills through recycling, re-use of materials, composting organic waste, and thermal treatment.” GSA’s entire SSPP may be found at <http://www.gsa.gov/portal/content/187149>.

Final Disposal Recommendations

Both H.R. 1734 and S. 2232 propose establishing a Civilian Property Realignment Commission (CPRC) that would be responsible for the final list of recommendations to be considered by Congress. In addition, both bills, by requiring the President to seek the consent of the Senate and to consult with leaders in both chambers, could enable Congress to influence the composition of the commission. On the other hand, consultations with congressional leaders and Senate confirmation of the Commission chair could slow down the development of recommendations if the nominations of several CPRC members of the nomination process are delayed.

S. 2178 would not create a new body to oversee the disposal process, but would instead utilize the existing Federal Real Property Council (FRPC) to develop asset management plans for each agency, which would include recommendations for disposal of underutilized properties. Membership on the FRPC would not be subject to congressional approval, but it would ostensibly require that the most knowledgeable real property officials from each agency play a central role in improving real property management by developing government-wide asset management principles and policies, as well as in vetting and finalizing recommendations to the OMB Director regarding which properties should be disposed of and by what method. Under H.R. 665, agency heads would recommend properties for disposal under the program that the bill would establish, but the OMB Director and the GSA Administrator would make the final selections.

Congressional Action on Recommendations

Both H.R. 1734 and S. 2232 would require a 45-day timeframe for congressional action. Congress would thus have fewer than seven weeks to review all recommendations—of which there may be hundreds—before voting, which could reduce oversight of major real property actions. Consolidation projects, for example, are often complex, multi-year efforts, with long-term consequences for the agencies and communities involved, and for which Congress is asked to provide hundreds of millions, or even billions, of dollars. For this reason, Congress regularly holds hearings on major consolidation proposals. For example, the effort to consolidate the Department of Homeland Security at St. Elizabeth's in the District of Columbia (D.C.) is estimated to cost \$3.26 billion and has been the subject of several congressional hearings.⁴⁴ The consequences of the project are wide ranging, and include changing traffic patterns in D.C., relocating thousands of employees, and ensuring historic preservation requirements are met. Similar issues have been raised regarding the consolidation of Food and Drug Administration headquarters, a project that has received hundreds of millions of dollars since FY2000. Congress may not feel it has sufficient time, under the proposed time constraints, to either approve or disapprove of the recommendations. S. 2178 and H.R. 665, on the other hand, would not require Congress to approve or disapprove a list of recommendations: both bills would use programs that are managed entirely by executive agencies.

Requiring Congress to approve or disapprove of the entire list of recommended actions, rather than approving or disapproving of actions regarding each individual property, could reduce

⁴⁴ U.S. Government Accountability Office, *Federal Real Property: DHS has Made Progress, but Additional Actions are Needed to Address Real Property Management and Security Concerns*, GAO-07-658, June 2007, p. 4. U.S. Congress, House Committee on Transportation and Infrastructure, *Subcommittee on Coast Guard and Maritime Transportation, Review and Status of the Multi-Billion Dollar Department of Homeland Security Relocation Project in Washington, D.C., and its Impact on the U.S. Coast Guard*, 112th Cong., 1st sess., September 23, 2011 (Washington, DC: GPO, 2011). U.S. Congress, House Committee on Appropriations, *Subcommittee on Homeland Security, St. Elizabeths and the Department of Homeland Security Consolidation*, 111th Cong., 2nd sess., March 25, 2010 (Washington DC: GPO, 2010).

conflict between various stakeholders interested in the properties in question. Some civilian agencies have found their disposal efforts complicated by the involvement of state and local governments, nonprofits, businesses, and community leaders with competing agendas. In 2002, for example, the USPS identified a number of “redundant, low-value” facilities that it sought to close in order to reduce its operating costs. As part of the facility closure process, USPS was required to formally announce its intention to close each facility and solicit comments from the community. USPS ultimately abandoned its plans to close many facilities it identified—including post offices that were underutilized, in poor condition, or not critical to serving their geographic areas—in part due to political pressure from stakeholders.⁴⁵ By moving the locus of decision making away from agencies and placing it in the hands of an independent commission, the amount of pressure that stakeholders exert on the process might be reduced.

The consequences of Congress failing to enact a joint resolution of approval would be quite different, however, than Congress failing to enact a joint resolution of disapproval. Should Congress fail to pass a joint resolution approving the Commission’s recommendations, as would be required under H.R. 1734, then agencies would not be required to implement any of the recommended actions. If Congress failed to pass a joint resolution of disapproval of the Commission’s recommendations, as proposed under S. 2232, then the recommendations would take legal effect and agencies would be required to begin implementation. The joint resolution of disapproval would potentially make it much more difficult to stop recommendations sent to Congress from becoming law, particularly if the President vetoed the joint resolution of approval..

Expedited Disposal

Agencies have long argued that public benefits conveyance requirements, particularly those that require screening for homeless use, create an administrative burden that delays disposition and drives up maintenance costs (see the “Statutory Disposal Requirements” section of this report). Therefore, savings may be generated to the extent that properties are able to bypass screening requirements and move through the disposal process more quickly. Under H.R. 1734 agencies would not be permitted to go beyond their existing authorities when disposing of properties as required by enacted recommendations, although GSA would be given the authority to “take such necessary and proper actions” to implement the Commission’s recommendations. In addition, the identification of specific properties for specific disposal or realigning actions may permit those properties to bypass statutory requirements that may otherwise have applied, such as those regarding public benefit conveyance. By contrast, S. 2232, H.R. 665 and S. 2178 explicitly exempt properties from public benefit conveyance requirements, but the exemptions under H.R. 665 would apply only to the 15 “high-value” properties that would be included in the program at any given time, while the exemptions under both S. 2232 and S. 2178 would apply to all properties recommended for disposal—potentially a much higher number than would be exempted under H.R. 665.

Real Property Database and Reporting

As discussed earlier in this report, basic data on the federal real property portfolio—including information on how many excess and surplus properties each agency holds—are currently limited. H.R. 1734 would require a report to be posted on a federal website that would make “relevant information” about the Commission’s recommendations available. H.R. 1734 would also require GAO to perform a detailed analysis of the recommendation and selection process,

⁴⁵ U.S. Government Accountability Office, *Federal Real Property: An Update on High-Risk Issues*, GAO-09-801, July 15, 2009, p. 15.

although no timeline is specified for the completion of the report, so it may not be completed until after Congress has had to vote on the President's recommendations. The Commission, however, would have the authority to access all information pertaining to the recommendations, including detailed data on each property's age, condition, operating costs, size, and the number of employees housed at the property. The Commission would also have access to other data that may be used by agencies when making their recommendations, such as the potential costs and savings of each realignment proposal. The Commission itself would be required to post a report on its findings, conclusions, and recommendations on its own website, which may result in agency-level data being made public through the Commission.

As noted, S. 2232 would make the central database of government-wide real property information—FRPP—available to six committees and three legislative agencies. This would permit Members and their staff, and their support agencies, to more effectively assist Congress with evaluating the Commission's recommendations and develop future legislation. Agency recommendations would be published in the Federal Register and transmitted as a report to the committees with FRPP access, and the Commission would post "relevant information" about its proceedings and recommendations on a publically accessible website.

S. 2178 would require the FRPC to submit to four committees a report that contains descriptive data similar to the report required under H.R. 1734. The report proposed by S. 2178 would require data not found in other proposals that Congress may find useful, such as an assessment of the leasing process, and recommendations for reducing the use of leased space for long-term needs; specific milestones for disposing of properties; and a requirement to attempt to renegotiate properties with at least two years left on their leases to reduce costs. S. 2178 would require GSA to establish a descriptive database that must be available at no cost to the public, but it does not specify what data must be included, or what functionality the database must have. If the database includes all of the data currently stored in the Federal Real Property Profile (consistent with national security concerns), and has the same search capabilities as the FRPP, then the new database could become a very useful oversight tool. However, the data might be limited in scope or could suffer from poor quality, which could decrease the utility of the data for making decisions or conducting analyses.

As noted, H.R. 665 would require GSA to establish and maintain a database of all federal real properties (other than those excluded for reasons of national security) that would be accessible to the public at no cost. The database would be required to include a wealth of descriptive information of each property, and it would permit users to search, sort, and download data. This approach would potentially provide the widest public access to federal real property data, and is the only proposal that would require online data to be searchable and downloadable—functions that transparency advocates believe are important tools for effective public oversight of federal spending.

Concluding Observations

Each of the bills analyzed in this report establishes procedures for selecting federal properties to sell and for the distribution of sales proceeds. Generally, each of the bills would apply net proceeds towards further real property disposals and reducing the federal deficit or debt. It is not clear, however, that much revenue might be generated under each bill, given the lack of even the most basic data needed for analysis. For example, it is not known how many excess, surplus, and underutilized properties are held by each agency, how much it would cost to bring each property to market, and the estimated fair market value of individual properties. FRPP data show that sales have not generated significant net proceeds—the amount of revenue remaining after the costs of

bringing the property to market are deducted—in recent years. For example, in FY2010, the government sold 466 properties that generated in \$57 million in net proceeds, and in FY2009 the government sold 2,228 properties that generated \$50 million in net proceeds.⁴⁶ The costs of bringing properties to market—whether they are due to environmental remediation, a backlog of needed repairs, or historic preservation requirements—or the undesirable location of unneeded properties are among reasons that so little profit is generated through sales. The proposed bills may increase sales revenue, however, by bringing properties to market that are in more desirable locations or less costly to prepare for sale. S. 2232 and H.R. 1734, for example, would both require the Civilian Property Realignment Commission to recommend at least five properties that are *not* identified as excess or surplus—and therefore not subject to disposal requirements—but which have relatively high fair market value (\$500 million total under H.R. 1734 and \$500 million each under S. 2232). Similarly, under S. 2178 the Director of OMB would have the authority to require agencies to sell properties that are not excess or surplus. If agencies are holding properties that are valuable, and which they have not declared excess—the first step in the disposal process—then these bills may provide a mechanism by which those properties may be brought to the market and possibly generate greater net proceeds than sales have in recent years. H.R. 665 would limit the scope of its real property disposal pilot program to properties that are declared excess or surplus, but it might also increase sales revenue and net proceeds by bringing the 15 properties most likely to sell at a high market value to be auctioned. If agencies invest their real property funds in bringing these properties to market as soon as possible, then valuable properties which might otherwise have been conveyed or slowly moving through the screening process would be up for sale weeks, months, or even years sooner than under the current process.

FRPP data also show that the reduction of operating and maintenance costs through three methods of disposal—conveyance, sale, and demolition—have yielded greater annual savings to the government than net proceeds from sales have. In FY2010 the government reduced its annual operating costs by \$274 million by disposing of unneeded properties through all methods and by \$145 million in FY2009—four times the amount of net proceeds from sales for those same years.⁴⁷ These figures do not include savings reported in the FRPP data that are the result of transferring properties between federal agencies, since the operating and maintenance costs have only been shifted from one agency to another, not eliminated, as when properties are taken out of the federal portfolio through sale, conveyance, or demolition. The government might generate greater value to the taxpayer, then, by disposing of some properties through the quickest possible method, rather than attempting to sell them, depending on variables such as how likely properties are to be sold, the cost of bringing them to market, and whether estimated net proceeds would exceed the operating and maintenance costs accrued while the property was on the market.

⁴⁶ Federal Real Property Council, *FY2010 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets*, September 2011, p. 13. Federal Real Property Council, *FY2009 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets*, September 2010, p. 8.

⁴⁷ Ibid.

Author Information

Garrett Hatch
Specialist in American National Government

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